

REMARKS

Claims 1-19 were pending. Claims 1-5 and 8-12 are rejected under 35 U.S.C. §102(e) as being anticipated by Garnett et al. (U.S. Patent No. 7,032,037) (hereinafter "Garnett"). Claims 6-7 and 13-14 are rejected under 35 U.S.C. §103(a) as being unpatentable over Garnett in view of Berg (U.S. Patent Application Publication No. 2002/0116475). Claims 15-17 are rejected under 35 U.S.C. §103(a) as being unpatentable over Garnett in view of Basso et al. (U.S. Patent No. 6,973,503) (hereinafter "Basso"). Claims 18-19 are rejected under 35 U.S.C. §103(a) as being unpatentable over Garnett in view of Basso and in further view of Berg.

Applicants cancelled claims 1, 8, 15 and 18-19 without prejudice or disclaimer. Hence, claims 2-7, 9-14 and 16-17 are pending in the Application. Applicants cancelled claims 1, 8, 15 and 18-19 only to expedite the issuance of claims 2-7, 9-14 and 16-17 and not in response to the Examiner's cited art. Applicants are not conceding in this application that cancelled claims 1, 8, 15 and 18-19 are not patentable over the art cited by the Examiner, as the present claim amendments and cancellations are only for facilitating expeditious prosecution of the subject matter (claims 2-7, 9-14 and 16-17) indicated by the Examiner as being allowable (see below). Applicants respectfully reserve the right to pursue these and other claims in one or more continuation patent applications.

Applicants amended claims 2, 9 and 16 to be rewritten in independent form and not to overcome prior art. Hence, no prosecution history estoppel arises from the amendments to claims 2, 9 and 16. *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co.*, 62 U.S.P.Q.2d 1705, 1711-12 (2002); 56 U.S.P.Q.2d 1865, 1870 (Fed. Cir. 2000). Further, the amendments made to claims 2, 9 and 16 were not made for a substantial reason related to patentability and therefore no prosecution history estoppel arises from such amendments. *See Festo Corp.*, 62 U.S.P.Q.2d 1705 at 1707 (2002); *Warner-Jenkinson Co. v. Hilton Davis Chemical Co.*, 41 U.S.P.Q.2d 1865, 1873 (1997).

Applicants thank Examiner Fearer and the Examiner's supervisor for discussing the rejection to claims 2, 9 and 16 with Applicants' attorney, Bobby Voigt,

on May 29, 2007. It was agreed that claims 2, 9 and 16 appear to contain allowable subject matter, and if, after a subsequent search, no new art is found that teaches these limitations, a notice of allowance will be issued allowing claims 2-7, 9-14 and 16-17. Applicants enclose herewith the arguments presented during the discussion with the Examiner and the Examiner's supervisor to refresh the Examiner's memory.

Applicants respectfully assert that Garnett does not disclose "bundling said client's request message and a control message by said control processor" as recited in claim 2 and similarly in claims 9 and 16. The Examiner cites column 32, lines 63-65 of Garnett as disclosing the above-cited claim limitation. Office Action (3/15/2007), page 2. Garnett instead discloses a load balancer 501 arranged between a network 507 and a plurality of servers. Column 32, lines 59-61. Garnett further discloses that each of the servers 505 is connected to the load balancer 50 via a switch 503. Column 32, lines 61-63. Garnett additionally discloses that thus incoming data packets arrive at the load balancer and are routed therethrough to a selected server 505. Column 32, lines 63-65. There is no language in the cited passage that discloses bundling the client's request message and a control message. Neither is there any language in the cited passage that discloses bundling the client's request message and a control message by the control processor.

Furthermore, during the discussion with Examiner Fearer and the Examiner's supervisor, Examiner Fearer pointed out column 36, lines 47-59 of Garnett. However, Garnett instead discloses that in HTTP, usually the first data packet contains the request so the first data packet, after the three-way handshake, is parsed to make the load balancing decision. Column 36, lines 51-54. Garnett additionally discloses that after the load balancing decision has been made, the connection to the load balancer is handed over to the selected server. Column 36, lines 54-56. There is no language in the cited passage that discloses bundling the client's request message and a control message. Neither is there any language in the cited passage that discloses bundling the client's request message and a control message by the control processor.

I. REJECTIONS UNDER 35 U.S.C. §102(e):

The Examiner has rejected claims 1-5 and 8-12 under 35 U.S.C. §102(e) as being anticipated by Garnett. As discussed above, the Examiner indicated that claims 2-5 and 9-12 contain allowable subject matter.

II. REJECTIONS UNDER 35 U.S.C. §103(a):

The Examiner has rejected claims 6-7 and 13-14 under 35 U.S.C. §103(a) as being unpatentable over Garnett in view of Berg. The Examiner has further rejected claims 15-17 under 35 U.S.C. §103(a) as being unpatentable over Garnett in view of Basso. Additionally, the Examiner has rejected claims 18-19 under 35 U.S.C. §103(a) as being unpatentable over Garnett in view of Basso and in further view of Berg. As discussed above, the Examiner indicated that claims 6-7, 13-14 and 16-17 contain allowable subject matter.

III. CONCLUSION:

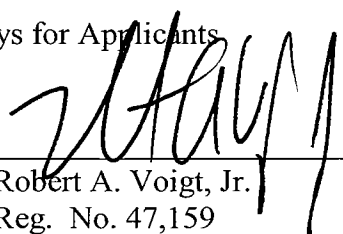
As a result of the foregoing, it is asserted by Applicants that claims 2-7, 9-14 and 16-17 in the Application are in condition for allowance, and Applicants respectfully request an allowance of such claims. Applicants respectfully request that the Examiner call Applicants' attorney at the below listed number if the Examiner believes that such a discussion would be helpful in resolving any remaining issues.

Respectfully submitted,

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